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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/217,469 12/21/98 ZAYDMAN

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QM02/0204

EXAMINER

HOANG, T

ART UNIT

PAPER NUMBER

3742

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Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/217,469

Applicant(s)
ZAYDMAN

Examiner
TU HOANG

Group Art Unit
3742



- ☐ Responsive to communication(s) filed on _____
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 1-25 is/are pending in the application.
- Of the above, claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-25 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claims _____ are subject to restriction or election requirement.

Application Papers

- ☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☒ The drawing(s) filed on Dec 21, 1998 is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☒ The specification is objected to by the Examiner.
- ☒ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) _____
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

- ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☒ Notice of References Cited, PTO-892
- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☒ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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Reissue Applications

Litigation information

Applicant is reminded of the continuing obligation under 37 CFR 1.56 to timely apprise the Office of any litigation information, or other prior or concurrent proceeding, involving Patent No. 5,599,471, which is material to patentability of the claims under consideration in this reissue application. This obligation rests with each individual associated with the filing and prosecution of this application for reissue. See MPEP §§ 1404, 1442.01 and 1442.04.

Surrender of the original patent

This reissue application was filed **without the required offer to surrender the original patent** or, if the original is lost or inaccessible, an affidavit or declaration to that effect. The original patent, or an affidavit or declaration as to loss or inaccessibility of the original patent, must be received before this reissue application can be allowed. See 37 CFR 1.178. However, since the original patent has already been submitted, it is assumed that this reissue application was filed with the required offer to surrender the original patent.

Amendment of the reissue application

Applicant is notified that any subsequent amendment to the specification and/or claims must comply with 37 CFR 1.121 (b).

The amendment filed on December 21, 1998 is informal/non-responsive because the proposed amendments to claims 1-25 do not comply with 37 CFR 1.121 (b), which sets forth the manner of amending claims in reissue applications. A supplemental paper correctly amending the claims is required in response to this Office Action. It is noted claims 15-25 are newly added claim but they are not all being underlined. Therefore, underlines for all occurrences are now provided by the examiner for examining purpose.

The amendment filed on December 21, 1998 has also introduced new matter into the disclosure. In accordance with 35 U.S.C. 251, no new matter shall be introduced into the application for reissue. Applicant is required to cancel the new matter in the reply to this Office action.

Drawings

37 CFR 1.174. Drawings.

(a) The drawings upon which the original patent was issued may be used in reissue applications if no changes whatsoever are to be made in the drawings. In such cases, when the reissue application is filed, the applicant must submit a temporary drawing which may consist of a copy of the printed drawings of the patent or a photoprint of the original drawings of the size required for original drawing.

(b) Amendments which can be made in a reissue drawing, that is, **changes from the drawing of the patent, are restricted.**

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If transfer of the patent drawings to the reissue application is desired, a letter requesting transfer of the drawings from the patent file should be filed along with the reissue application.

If transfer of the original drawing is contemplated, applicant must submit a copy of the original drawing.

The drawings of the original patent may be used in lieu of new drawings, provided that **no alteration whatsoever is to be made in the drawings**, including canceling an entire sheet.

When the reissue case is ready for allowance, the examining group makes the formal transfer of the original drawing to the reissue case ** >, notation thereof being entered on the file wrapper of the patented file. < Additional sheets of drawings may be added, but no changes can be made in the original patent drawings.

The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on 12-21-98 therefore have been objected under 35 U.S.C. 251 because they introduce new matter into the drawings. The original disclosure does not support the showing of the newly added Figures 23 and 24.

Specification

Applicant is reminded of the proper content of an abstract of the disclosure.

A patent abstract is a concise statement of the technical disclosure of the patent and should include that which is new in the art to which the invention pertains. If the patent is of a basic nature, the entire technical disclosure may be new in the art, and the abstract should be directed to the entire disclosure. If the patent is in the nature of an improvement in an old apparatus, process, product, or composition, the abstract should include the technical disclosure of the improvement. In certain patents, particularly those for compounds and compositions, wherein the process for making and/or the use thereof are not obvious, the abstract should set forth a process for making and/or use thereof. If the new technical disclosure involves modifications or alternatives, the abstract should mention by way of example the preferred modification or alternative.

The abstract should not refer to purported merits or speculative applications of the invention and should not compare the invention with the prior art.

Where applicable, the abstract should include the following:

- (1) if a machine or apparatus, its organization and operation;
- (2) if an article, its method of making;
- (3) if a chemical compound, its identity and use;
- (4) if a mixture, its ingredients;
- (5) if a process, the steps.

Extensive mechanical and design details of apparatus should not be given.

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 250 words. It is important that the abstract not exceed

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250 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because it is not limited to a single paragraph (i.e., the sentence "25 Claims, 15 Drawing Sheets" must be deleted), the use of legal phraseology such as "means" should be avoided (i.e., the term "means" recited after "supporting" at lines 5 and 6 and "tray" recited at lines 5 and 7), and the term "opening" recited at line 13 must be changed to "openings" (as shown from its original patent abstract). Furthermore, there is a missing text between the terms "under tray means is placed" and "a container for" recited at line 7. Before "a food product" recited at line 14, the term "a holder for" should be inserted. Appropriate correction is required. See MPEP § 608.01(b).

The disclosure is objected to under 35 U.S.C 251 because of the following reasons:

As noted in accordance with 37 CFR 1.173 (MPEP 1411), the specification of the reissue application must include the entire specification and claims of the patent, with the matter to be omitted by reissue enclosed in square brackets; and any additions made by the reissue must be underlined, so that the old and the new specifications and claims may be readily compared. **No new matter shall be introduced** into the specification. In this instant, applicant has failed to do so.

In general, the introduction of the terms "cooking" into the abstract, pages 2, 4, 5, 8, and other parts throughout the specification, "heating elements for cooking a food product" recited in page 3, "small fast food groceries" (page 3), "control panel" (for the compartment 16 noted at line 24 of page 5), and amendments to the original patent claims 1-14 and newly added claims 15-25 for changing the claim scope from a compact smoking oven to a different claim scope of a compact cooking oven or embodiment, the addition of new drawings Figures 23-24 are considered clearly new matter.

On page 2, the newly added phrase "For using oven as smoking embodiment under tray for fat collection **install container** for accommodating wooden chips" (emphasis added) recited at lines 2-3 (excluding the title) is vague and can not be clearly understood.

On page 3, at lines 4 and 19, the introduction of the phrase "or small fast food groceries" into the specification has been considered as new matter and therefore it must be deleted. Such deletion of the terms "smoking" noted at line 7 and "box-shaped" noted at line 8 is also considered new matter introduced to the specification as a whole and therefore they must be re-introduced back to the specification. At line 10, the introduction of "at least one heating element for cooking a food product" recited at lines 10-11 is clearly new matter. It is noted that in the specification as originally filed, the heating element is for heating the wooden chips container for

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generating smoke as well as inherently for heating the air inside the oven, thereby heating the food product by convection but not for solely heating the food product as now recited. At lines 10-11, the phrase **"For using oven as smoking embodiment under tray for fat collection is mounted a container for..."** (emphasis added) is vague and does not make any sense.

On page 5, at line 7, the introduction of the phrase "FIGS 23-24 are section front view of the cooking embodiment oven with a grate" is clearly new matter (also note on page 8, lines 19-26). There is also missing text between "embodiment" and "oven" recited at line 12 (i.e., it is noted that the term "The smoking" has been omitted from the original patent application). At line 14, after "wall" the reference number "6" should be inserted. The introduction of the term "control panel" recited at lines 22 and 24 is also considered new matter.

The detailed description of Figure 11C is missing in lieu of the deletion made to page 8, lines 12-13.

Appropriate correction is required.

New matter

The specification is objected to under 35 U.S.C. 251 because the specification, as originally filed, does not provide support for the invention as now claimed.

Again, the specification of the patent as originally filed does not provide support for newly added Figures 23 and 24, for elements such as compact "cooking and/or" smoking oven or "cooking" and smoking oven, small fast food groceries, at least one heating element for cooking a food product, "control panel" compartment, such a deletion of the phrase "FIGS. 11A-11C are a plan view, a side views and a section of the tray 12 with a louver 13 for food defrosting of the compact smoking oven." originally indicated on page 8, lines 12-13, the introduction of the phrase "FIG. 23....food product" added to page 8, lines 19-26, the deletion of the term "box-shaped" in the specification, and the recitation of "at least one heating means for heating food products" as now amended to the claim, and other features already described above. It is further noted the claim as now amended with the deletion of all essential features for at least generating smoke has clearly change the claimed scope of the original patent claims, This is clearly new matter.

Title

The title of the invention as now amended is not descriptive. As noted in accordance with 37 CFR 1.173 (MPEP 1411), the specification of the reissue application must include the entire specification and claims of the patent, therefore, a deletion of the word "smoking" from the title of the patent has made the title non-descriptive and also is considered new matter. A new title is required that is clearly indicative of the invention to which the claims are directed. The old title is suggested: A COMPACT SMOKING OVEN

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Claim Rejections - 35 USC § 251

Claims 1-25 as now amended are rejected under 35 U.S.C. 251 as being improperly introduced new matter in a reissue application .

Rejection based upon recapture of surrendered subject matter

Amended claims 1-17 are rejected under 35 U.S.C. 251 as being an improper recapture of broadened claimed subject matter surrendered in the application for the patent upon which the present reissue is based. See *Hester Industries, Inc. v. Stein, Inc.*, 142 F. 3d 1472, 46, USPQ2d 1641 (Fed. Cir. 1998); *In re Clement*, 131 F. 3d 1464, 45 USPQ2d 1161 (Fed. Cir. 1997); *Ball Corp. v. United States*, 729 F.2d 1429, 1436, 221 USPQ 289, 295 (Fed. Cir. 1984). A broadening aspect is present in the reissue which was not present in the application for patent. The record of the application for the patent shows that the broadening aspect (in the reissue) relates to subject matter that applicant previously surrendered during the prosecution of the application. Accordingly, the narrow scope of the claims in the patent was not an error within the meaning of 35 U.S.C. 251, and the broader scope surrendered in the application for the patent cannot be recaptured by the filing of the present reissue application.

It is noted that in the patent application, original claims 1-3, 5-6, 9, 12 and 17 was rejected by Jacobs (US 4,924,071). The claims then were amended with the cancellation of claims 1, 4, 7-13, and 17 and the addition of claims 18-26.

Only claim 18 had been again rejected by Jacobs.

Then, claim 18 had been canceled along with claim 22 and claim 27 had been added. Claim 6 had been canceled latter.

Amendments have been made to claims 2, 3, 5, 14, 15, 16, 19, 20, 21, 23, 24, 25, 26, and 27 to put these claims under condition for allowance in which the original claim 19 included all limitations of the original claim 1 in combination with the limitation of the original claim 2 and the allowable subject matter of the original claim 4: "heating means including a heater located underneath said container with wooden chips so as to heat a bottom of said container and thereby to heat the wooden chips, said heater being formed as a gas heater supplied from a gas tank so as to provide smoking without an electric energy". Original claim 19 was renumbered as claim 1 when issue. The original patent claims 2, 3, and 5 were dependent from the original claim 19 and were renumbered as 2, 3, and 4 respectively for issue; the original claim 20 included all limitations of the original claim 1 in combination with the limitation of the original claim 8 (i.e., "an openable door....to prevent smoke escape from said housing"). Original claim 20 was renumbered as claim 9 for issue; the original claim 21 also included all limitation of the original claim 1 in combination with the limitation substantially the same as recited in the original claim 13 (i.e., "food product supporting means...and a plurality of hooks for suspending the food product"). Original claim 21 was renumbered as claim 10 for issue; the original claim 23 included also all limitation of the original claim 1 in combination with

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limitations recited in the original claim 11 (i.e., "heating means...distributed fashion"). Original claim 23 was renumbered as claim 11 for issue; the original claim 24 also included all limitation of the original claim 1 in combination with limitations "food product supporting means including at least one rod rotatable about a horizontal axis and having a support displaceable in an axial direction for removal of the food product". Original claim 24 was renumbered as claim 12 for issue; the original claim 25 also included all limitation of the original claim 1 in combination with limitations recited in the original claim 13. Original claim 25 was renumbered as claim 5 for issue, original claims 14, 15, and 16 was dependent from claim 25 and were renumbered as claims 6, 7, and 8 respectively for issue; the original claim 26 also included all limitation of the original claim 1 in combination with limitations recited in the original claim 17 (i.e., "food product supporting means including a grate...are moved") and a recitation of "two discs rotatable about a horizontal axis with one of said discs displaceable in an axial direction; and a turnable rod located between said rotatable discs and supporting said grate". Original claim 26 was renumbered as claim 13 for issue; the original claim 27 was replaced the canceled claim 22, claim 27 also included all limitation of the original claim 1 in combination with limitations recited in the original claim 10. Original claim 27 was renumbered as claim 14 for issue.

It is noted that in the present reissue application, claims 1-14 was amended with the limitation of the original claim 1 in combination with other limitations (as recited in the original claims 6-7) now being omitted or broadened (i.e., "smoking", "box-shaped", and "a container....so as to cool said upper wall"). Since at least such limitation now being omitted or broadened in the present reissue was originally presented in the original application to make the claims allowable over a rejection (i.e., the rejection of the original claim 1 over Jacobs) made in the original application, such omitted limitation relates to subject matter previously surrendered by applicant, and impermissible recapture exists.

It is further noted that the limitation of original claims 6-7 was added in the original application claims (i.e., claim 1) for the purpose of making the claims (original claims 19 and other claims 2-3, 5, 14-16, 20-21, 23-27) allowable over the rejection (by Jacobs) made in the application. Newly added claims 15-17 are dependent from amended claim 1, therefore are also rejected in the same ground. Claims 1-17 of the present reissue application are also broader in scope than claim 18 of the original application which was canceled from the original application to obtain a patent. *Ball*, 729 F.2d at 1436, 221 USPQ at 295. Even though application made no argument on the record that such limitations was added to obviate the rejection, the nature of the addition to the claim was shown that such limitations was added in direct reply to the rejection. This too will establish the omitted limitation as relating to subject matter previously surrendered. Thus, such omission of such limitations set forth above is related to subject matter surrendered in the original application. Since the applicant had narrowed the claims for the purpose of obtaining allowance in the original prosecution, and applicant is now precluded from recapturing subject

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matter previously surrendered. See also *Mentor Corp. v. Coloplast, Inc.*, 998 F.2d 992, 994, 27 USPQ2d 1521, 1524 (Fed. Cir. 1993).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 as now amended is incomplete because it was not ended by a period, therefore, the “;” at the end of the claim must be changed to a period. The term “and” recited at lines 3 (second occurrence) and 5 (first occurrence) should be deleted. The term “means for holding a food product supporting means” recited at line 5 should be replaced by “means for holding said food product supporting means” otherwise, it is unclear if the “a food product supporting means” recited at line 5 were the same as the one previously recited at line 4. If these “food product supporting means” were different, then essential structural cooperative relationships between the two are needed since such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01.

In claim 2, there is insufficient antecedent basis for “said container” recited at line 2 in the claim or from the preceding claim 1. Claim 2 is further objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim, or amend the claim to place the claim in proper dependent form, or rewrite the claim in independent form. It is noted that claim 1 reciting “at least one heating means for heating food products”, however, claim 2 now recites “heating means include a heater located underneath said container with wooden chips so as to heat a bottom of said container and thereby to heat the wooden chips”. Thus, it is clearly that the heating means as recited in claim 2 is for heating the container and the wooden chips but not for heating food. As noted in claim 1, the “heating means” was recited in an attempt for performing a specified function of heating the food products. However, as now recited in claim 2, such “heating means” is for heating the container and wood chips, therefore claim 2 and its dependency, claim 3 are further rejected under 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967).

In claim 4, the term “; and further” recited at line 1 should be changed to “further”. There also are insufficient antecedent bases for “the door” recited at line 2, “said container” recited at lines 3 and 4, and “said openings” recited at line 4. The recitation of “a food product supporting means” at lines 1-2 must be deleted since it has already been cited in the preceding claim 1.

In claim 5, the “;” recited at line 1 must be deleted. The term “and” recited at line 10 (before “food product supporting means”) should be replaced by “wherein said”. The term “an” must be inserted before “axial direction” recited at line 13. The phrases “a slot with a hole or a

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hole of said support" recited at line 14 and "a slot with a hole or a slot of other support" recited at line 16 are so vague and cannot be clearly understood. Are "slot with a hole" and "a hole of the support" the same? Does applicant mean the openings of the discs instead of the support since there is no antecedent basis for such support? Clarification is needed and appropriate correction is required.

In claim 6, "said disc" recited at line 1 should be "said discs" since there were two of them. The use of alternative format of "a plurality of closeable and openable slots, or a plurality of the slots and through going openings" recited at lines 3-4 is improper and renders the claim indefinite since such a plurality of closeable and openable slots and a plurality of the slots and through going openings are clearly two different embodiment in which each has required different structural and operational characteristics.

In claim 7, "their axis" recited at line 2 must be changed to "their axes".

In claim 8, the comma after "oven" recited at line 1 must be deleted.

In claim 9, the ";" recited at line 1 should be replaced by "further comprising".

In claim 10, the comma" after "oven" recited at line 1 should be deleted. The ";" recited at line 1 should be replaced by a comma. The term "and" recited at line 10 should be changed to "said".

Claims 12-13 are vague and indefinite as for the same reason set forth in claim 5 above.

Similar changes are also suggested for claims 11-13.

Additionally, in claim 13, the term "said grates are" recited at line 12 should be changed to "said grate is", the term "disc" recited at line 14 should be "discs" (from the original patent claim), the phrase "a turnable at least one rod" recited at line 15 should be "at least one turnable rod" otherwise it does not make any sense.

In claim 14, the phrase "oven, as defined in claim 1;" recited at line 1 should be changed to "oven as defined in claim 1, further comprising". Before "food product" and "tray means" recited at line 12, the term "said" should be inserted since these two elements have already been recited in the preceding claim 1.

In newly added claim 15, the term "and" recited at line 1 should be changed to "further comprising". The term "said opening" recited at line 5 lacks antecedent from the preceding claim 1. Thus, "opening" must be changed to "openings". Claim 15 is also appeared to be incomplete as it was ended by a semicomma (";") and therefore such ";" recited at the end of the claim must be replaced by a period. Furthermore, in claim 15, the recitation of "means for heating said container" recited at lines 2-3 renders the claim indefinite since this heating means has not further limited the heating means recited in claim 1. It is unclear whether these two heating means the same or different. Structural cooperative relationships between these two heating means are needed.

Newly added claim 16 is also vague and indefinite since there is insufficient antecedent basis for the limitation "said compartment and control panel" recited at line 5. As noted at line 2, there is only a control panel compartment being recited. The term "; and" recited at line 1 should

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also be changed to “, further comprising”.

In newly added claim 17, the term “a food product supporting means” recited at line 1 must be changed to “said food product supporting means”. Claim 17 is also vague and can not be clearly understood as for the same reason set forth in claim 5 above. It is further noted that the phrases “at least one a turnable about a horizontal axis rod” recited at line 6 and “between portions a grate and supporting said grate” recited at line 7 do not make any sense and cannot be clearly understood.

In newly added claim 18, “said grates” recited at line 4 lacks antecedent basis in the claim. The phrase “portions a grate” recited at line 8 and “said support rotatable” recited at line 9 do not make any sense. The term “other support” recited at line 11 is indefinite since such support has not yet been clearly defined. The term “said rotatable food product supporting means” recited at lines 13-14 also lacks antecedent basis in the claim. Claim 18 is vague and indefinite as for the similar reason set for in claim 5 above. Appropriate corrections are needed.

Newly added claim 19 is vague and indefinite as for the same reason set forth in claims 5 and 18 above. Furthermore, the phrase “a hole support rotatable..” recited at lines 5-6 is vague and cannot be clearly understood.

Newly added claims 20-21 are indefinite as for the same reason set forth in claims 5 and 18 above. Claims 20-21 must be carefully reviewed and appropriate corrections are needed. Additionally, in claim 21, “said rods” recited at lines 4-5 does not have clear antecedent basis in the claim.

Newly added claims 22-25 are vague and indefinite as for the same reasons set forth in claims 5, 17 and 18 above. For example: In claim 22, there is no antecedent basis for “said grates” recited at line 4, the phrase “with on of said discs” recited at line 6 is unclear and cannot be clearly understood, “said rotatable discs” recited at line 7 has no antecedent basis; In claim 23, “said rotatable food product supporting means” recited at the last line does not have clear antecedent basis in the claim; In claim 24, “a food product supporting means” recited at lines 3-4 must be changed to “said food product supporting means” for proper antecedent basis (similar change is also suggested for claim 25).

It is further noted that newly added claims 18-25 with each is directed to an independent and distinct invention. Since these claims have never been introduced or claimed in the original patent, no restriction on different invention or species is required and these claims are treated by a rejection such as not being for the invention disclosed in the original patent as previously set forth above, as evidenced by the claims in the original patent (In re Rowand, 526 F. 2d 558, 187 USPQ 487 (CCPA 1975)) or not being for matter which might have been claimed in the original patent, or on the ground which may be lack of defect in the original patent and lack of error in obtaining the original patent as previously set forth above.

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Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7, 9, 12, 16, 19- 21, and 25 as being best understood are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Koopman (US 5,361,686). Koopman shows all of the claimed features which includes a compact oven comprising a housing having a peripheral double-wall construction (110,112,114,116,118,120) in which the inner wall portion is provided with a plurality of through going openings 134,136 (shown in Figures 3-5), at least one heating means 146 for heating food products, a food product supporting means having at least two rotatable discs 420,430 with each disc has a plurality of holes 440 bored therein for receiving rods or spits 450, means 400, 410 for holding the food supporting means, and tray means 160, 220 located below the food supporting means for collecting fat.

Claims 1-4, 9, 12, 14-16, 19, 24-25 as being best understood are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Jacobs (US 4,924,071) cited in the parent patented application. See Figures 2, 4-5, and 7.

Claim 23 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Schmid et al (US 5,562,022). Schmid et al shows a compact oven 22 comprising a housing having a peripheral and inner walls, at least one heating means for heating a food product, and food product supporting means located in the housing and including at least one support provided with at least one rotatable disc 4 or 5 with a plurality of hooks or bars 51 for suspending the food product or baskets 6, and tray means or floor located below the food product supporting means to collect fat.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koopman in view of Schmid et al (US 5,562,022). Koopman discloses substantially all features of the claimed invention except for each rod is turned about its axis by at least one flywheel connected to the rod as the discs rotated. Schmid et al discloses the use of flywheel 6 provided for each rod 7. It would

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have been obvious to one having ordinary skill in the art at the time the invention was made to utilize in the food supporting means of Koopman the flywheel as taught by Schmid et al in order for the rods to be rotated about its own axis in an opposite direction under the action of the flywheel when the disc of the supporting means rotate.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jacobs (US 4,924,071) cited in the parent patented application. Jacobs discloses substantially all of the claimed features except for the use of gas heater for the heating means. It is noted that the use of gas heater if so desired for the heating means is old. It would be within the purview of obviousness to one having ordinary skill in the art to replace the heating means of Jacobs by any conventional gas heater in order to provide heat for heating food products or burning woodchips or the like.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

Mason (US 3,789,824), Gray et al (US 2,072,364), McLain (US 3,817,166), Martinez (US 4,643,163), Jacobson (US 4,130,052), and Stephen, Jr. (US 3,959,620) are all cited in the parent patented application (no copy will be provided).

Unruh et al (US 5,421,318), Ghenic (US 4,982,657), Brown (US 3,126,814), and Tsai (US 5,970,854).

This application repeats a substantial portion of prior Application No. 08/258,732, filed June 13, 1994, now US patent No. 5,599,471, and adds and claims additional disclosure not presented in the prior application. Since this application names an inventor or inventors named in the prior application, it may constitute a continuation-in-part of the prior application. Should applicant desire to obtain the benefit of the filing date of the prior application, attention is directed to 35 U.S.C. 120 and 37 CFR 1.78.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tu Hoang whose telephone number is (703) 308-3303.

tbh

January 14, 2000


Tu Ba Hoang
Primary Examiner